Ewart, John Skirving

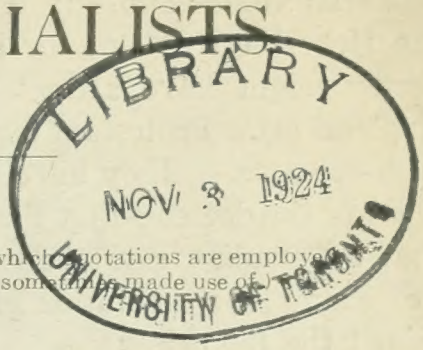
The Kingdom papers.

No.5.

THE KINGDOM PAPERS, No. 5.

NE TEMERE DECREE.

SOME IMPERIALISTS.



(In order to draw attention to the purpose for which quotations are employed, italics not appearing in the original are sometimes made use of.)

Everything that makes either for unity or discord among Canadians comes within the scope of the Kingdom Papers. I cannot hope, and I shall not endeavor to produce universal agreement. We have different mental organizations and shall always differ upon very many points. But whenever occasion seems to require it, I shall do what I can to enable English and French, and Protestant and Catholic, at least to understand one another a little better, and to sympathize with each other a little more.

It is with that purpose in view that I venture to submit a short (I hope a reasonably clear) statement with reference to the Ne Temere decree. And, may I ask that, during perusal of it, an effort may be made to discard the effects which have not unnaturally been produced by much that has been very foolishly said by persons who either knew little of that which they discussed, or cared little what complexion they put upon it.

Particularly may I ask, that persons whose opinions have been induced by the report of the committee appointed by the Synod of the Diocese of Toronto, will think it possible that they have been misled by that document—that they will afford me a fair opportunity of proving that for many of the statements of the report not the slightest justification can be offered; and that for the innuendoes of many of its disturbing headlines such as: "Are the Decrees of Rome to Rule in Canada?"; "The Dominion Supreme"; "Interference with this Supremacy"; "What Does Rome Now Claim?"; "Rome Can Destroy Matrimony"; "The Members of the

Protestant Reformed Religion Have Rights"; "Citizens Must Not Be Deprived of the Freedom Given by the Law of the Land"; "What Power is to Settle Our Marriage Laws"—that for the innuendoes of these sentences there can be no adequate apology.

MISUNDERSTANDING: Present excitement was precipitated by the Hebert case. But for it, the promulgation of the Ne Temere decree might have attracted as little attention in Canada as in England (*a*). Protestant assemblies here have associated the decree with the case. They have imagined that the case was an enforcement of the decree—that the Pope had issued a decree in Rome, and that a Canadian court had forthwith given effect to it in Canada. For example, a resolution of a Methodist meeting in Toronto contained the following:

"We note with alarm that the ground is taken by the Romish Church, and evidently by the judge in the case cited, that the Ne Temere decree of the Pope and College of Cardinals at Rome gives authority to the said Church to subordinate the civil laws of the Province of Quebec, and thus make null and void the authority of the Lieutenant-Governor under whose seal the marriage was performed."

And a pastoral letter of the Anglican House of Bishops (21 May, 1911) contained the following:

"Whereas the minds of many have been greatly disturbed by a decision in the Courts of the Province of Quebec annulling a marriage between two members of the Roman Church, solemnized by one authorized by the state to officiate at marriages, and by enforcement of the decree known as the Ne Temere decree by the Bishop of Rome; and

"Whereas we believe the said decision to be contrary to the Christian ideal of marriage, to involve grave civil injustice, and to be in its consequences destructive to the home life of the people."

The writers of these sentences most completely misapprehended the situation. The Ne Temere decree had no more to do with the Hebert case than nad the Turco-Italian war. Let me make this perfectly clear (it is a simple task), and afterwards endeavor to explain, with such precision as I can, what the effect of the decree really is.

(*a*) In reply to a question in the House of Commons, Mr. Birrell (a member of the British Government) said: "The law knows nothing of papal marriage legislation. We believe that under it, our Catholic fellow men are not so free as we to marry and to divorce and marry a ai . Our courts will continue to administer our own law, and all who apply or its benefits shall have them. It has lost none of its efficiency since August 2, 1907."

HEBERT v. CLOUATRE: Two points were involved in the decision, namely:

1. According to the law of Quebec, a Protestant minister cannot marry two Roman Catholics.

2. According to the law of Quebec, the validity of a marriage contract between two Roman Catholics must be decided by the Roman Catholic Ecclesiastical courts, and not by the civil courts.

That the Ne Temere decree had no relation to, or influence upon the Hebert case, results very indisputably from the fact that the decree came into existence in 1907, whereas the two points involved in the case have been discussed in a long series of similar cases dating back at least 60 years, and very probably to a very much earlier period. I might content myself with a mere statement of that fact; but perhaps a few words in explanation of each of the points of the case may not be without interest.

1. The first of them is one of purely legal character: Can Roman Catholics (not, can Protestants; and not, can a Roman Catholic and a Protestant; but, can Roman Catholics) be legally married otherwise than by a Roman Catholic priest? And the answer depends not upon the terms of any decree—Papal or other—but upon the proper interpretation of an old Quebec statute. Long and technical arguments can be urged in support of each side of the question; and the Quebec judges hold different opinions. The decisions in Burn v. Fontaine, 1872, 4 Rev. Leg. 163; and Delpit v. Coté, 1901, R.J.Q., 20 C.S. 338, uphold the validity of such marriages, while other decisions follow the adjudication of the ecclesiastical courts and declare them invalid.

I shall not attempt an examination of the merits of these conflicting opinions. There is much to be said upon both sides of the question, and I have not fully considered it. All that I have to say is that if the view of the statute upheld in the Hebert case is wrong, the remedy is an appeal to a higher court; and if that view is right, then, Roman Catholics desiring to be married must obey the law so long as it stands unchanged. Ought it to be changed? Certainly, if Roman Catholics so desire. But I should think that inasmuch as Roman Catholics appear to be perfectly satisfied with it, and inasmuch as Protestants cannot be in the least affected by it, no Protestant ought to expect to accomplish very much by agitation against it.

2. The Quebec judges hold opposite opinions, also, upon the second point involved in the Hebert case, namely the jurisdiction of the civil courts to decide upon the validity of a marriage contract between two Roman Catholics. In 1880, it was decided (Laramée

v. Evans 24 L.C.J. 235.) that the validity of a marriage between Roman Catholics was one for decision by the Roman Catholic Ecclesiastical Court. In 1901, Mr. Justice Archibald in an exhaustive judgment of about 50 pages (Delpit v. Cote, R.J.Q. 20 C.S. 338) held otherwise, and decided the question himself. The Archbishop had held that a marriage of two Roman Catholics by a Protestant minister was invalid. Mr. Justice Archibald said, that the Archbishop's decision was "null and void" and that the marriage was good. A few months afterwards, Mr. Justice Lemieux made reply to Mr. Justice Archibald, in 37 pages (Durocher v. Degre, 1901, R.J.Q. 20 S.C. 456). A majority of the judges would probably hold that questions of that character must be decided by the Roman Catholic Ecclesiastical Court. Whether or not that is right must be determined by interpretation of the Quebec statute. The Ne Temere decree has not the slightest bearing upon the point

To understand the Roman Catholic view we must distinguish sharply between marriage and the civil effects of marriage. The Roman Catholic Church declares that marriage is a sacrament; and that the Church alone can deal with it. As to the legal or civil effects of marriage, the Church makes no pronouncement. They are clearly within the scope of the civil law, and in no two countries is the law the same. In one, the wife may get her "thirds", and the husband his "curtesy"; in another there may be a sort of property partnership, and so on. All those arrangements are the results of the fact of marriage—they are its civil effects; while the marriage itself is a religious act. The distinction is simple.

Although in recent years departure from the Roman Catholic view of marriage as a religious act has been somewhat rapid, our own Canadian History reminds us of the earlier stringency of British marriage law, and the limitation to certain favored churches of the right to solemnize a matrimonial alliance. In 1844, Chief Justice Tindal speaking for all the judges who advised the House of Lords in Queen v. Millis (10 Cl. and F. 534) said that previous to the statute of 26 Geo. 2. some religious solemnity had been essential, and that

> "Whatever, at any time, has been held by the law of the church to be a sufficiently religious ceremony of marriage, the same has at all times satisfied the common law of England in this respect" (655,6).

The courts of common law took no concern in these matters, he said, leaving them

> "to the sole jurisdiction of the spiritual courts" (656).

A man belonging to the Anglican Church had been married to a Presbyterian woman by a Presbyterian clergyman, and inasmuch as the Presbyterian clergyman was not, legally, a clergyman at all, the marriage was held to be bad. That, of course, is not now the law either in England or in Canada. Statutes have changed it very considerably. The view of the Roman Catholic Church, however, remains unaltered. It still regards marriage as a sacrament, and a majority of the Quebec judges would decline to declare whether or not two Roman Catholics were husband and wife.

Speaking very deferentially, I believe that the functions of the Quebec civil courts are not thus limited, and that in a province in which all religions are, from a legal standpoint, equal, the majority view is not only anomalous in theory, but impracticable in operation.

Very clearly, the Courts must have jurisdiction in cases in which the parties do not belong to any church. For if not, the validity of such a marriage cannot be investigated at all. Very clearly, too, the courts must also decide the question when the parties belong to churches which have no ecclesiastical courts accustomed to deal with the subject. In other words the Quebec courts must have jurisdiction in all cases except those in which both the interested parties are Roman Catholics. And we thus arrive at the conclusion that if, in that special class of cases, the Quebec courts have no jurisdiction, it must be because of some very special position occupied by the Roman Catholic Church. So far as I am aware it has no special position in this respect.

I say that the Quebec courts must have the jurisdiction referred to in cases in which the interested parties are non-Catholic. I may properly go further and say that the Quebec courts have always so held—no judge, I believe, has ever questioned that jurisdiction. It has been exercised in many cases: in Dorion v. Laurent, 1843, 17 L.C.J. 324; Mignault v. Hafernan, 1866, 10 L.C.J. 137; Connolly v. Woolrich, 1867, II L.C.J. 222; Burn v. Fontaine, 1872, 4 Rev. Leg. 163.

It is my view, then, that the Quebec courts have jurisdiction to decide the question of the validity of marriage, and that no distinction can be made between cases in which Roman Catholics are interested and those in which they are not. My opinion, however, upon such a point is of little value, and my inability to appreciate the distinction so ably contended for by some of the Quebec judges may possibly be attributable to my Protestant training. I state my view for what it is worth, and rather because, in writing this paper, I may be expected to do so, than because I should care to dogmatise upon such a point.

In any event, this at all events is very clear, that if the Quebec courts are wrong, they may (upon this point as upon the other) be put right by appeal to a higher court. If, on the other hand, the courts are right, and if Roman Catholics desire that marriage questions arising between them should be settled rather by the civil courts than by their own church courts, then the law should be altered to suit their wishes. But if (as is quite possible) Roman Catholics are perfectly satisfied with the doctrines and practices of their church, probably it would be better to leave the law as those alone interested in it would wish it to be.

I have now discussed the two points involved in the Hebert case. Indisputably the Ne Temere decree had nothing to do with either of them. Indisputably the Pope and his decree had no more influence upon them than had John S. Ewart and his Papers. Indisputably they are points which have arisen many times during a long course of years in the Quebec courts, and which have been variously determined. Indisputably they have affected Roman Catholics only. And, so far as I know, the only persons who have made any complaint about them are some Protestants who are in no way prejudiced by them.

If any person shall ever find himself aggrieved by such a decision as that rendered in the Hebert case, he may appeal to a higher court. If he shall there find that the statute law is against him, he may petition the legislature for alteration of it. Until this day, nobody has ever appealed, and nobody has ever petitioned. Protest has come only from Protestants who appear not to have made very much effort to understand the subject.

The Ne Temere Decree: What now is the Ne Temere decree? Does it affect non-Catholics? And if so, in what way, and justifiably or otherwise?

As preliminary to exposition, distinguish between the ordinary civil law and the ecclesiastical law of the respective churches. According to the Westminster Confession of Faith

> "The man may not marry any of his wife's kindred nearer in blood than he may of his own" (Cap. 25, art. 4)

That is to say a Presbyterian (say, in Ontario) may not marry his deceased wife's sister, or even his deceased wife's niece (*a*). If he does, he is aware that his church will regard his marriage as invalid. On the other hand, he knows that it will be sanctioned by the civil

a) That is the law of the Church of England also.

law. He does as he pleases. And if anybody were to issue a protest, declaring that the effect of the Presbyterian Confession is "to impose upon Canada" the laws of the Westminster divines, he would probably be regarded as a very foolish fellow.

The same Confession provides that

"Such as profess the true reformed religion should not marry with infidels, papists or other idolators" (Cap. 25, art. 3)

But that, too, has never had any effect upon the laws of Canada. These rules are binding merely upon members of the church adopting them. (There is no difficulty in seeing that, when the rules are Protestant, even when they declare that certain "incestuous marriages" cannot "be made lawful by any law of man"—cap. 24, art. 4). And if members of the Presbyterian church disobey its rules, they may incur such penalties as the church may choose to enforce—there being always the alternative of withdrawal from its membership. The laws of Canada are no more affected by Presbyterian or Roman Catholic rules than are the orbits of the planets. Is not that unmistakably certain?

To the imposition of church penalties, no objection can be made. Every society of which a man may become a member has its rules, and its penalties for their breach. And every member must pay his penalties or leave his society. There is no tyranny and nothing unreasonable in that. Indeed two of the conclusions of the report above referred to are as follows:

"That no church, priest or minister thereof, in the Dominion has the right, because of any supposed ecclesiastical law, rule or privilege, to seek to disturb or affect such status when it has been obtained as above."

"This does not interfere with whatever power each church may have in the Dominion to exercise ecclesiastical supervision over, and to administer such censure, and impose such penalties as its laws permit upon its members, so long as the same do not affect the legal status of the married or their children."

And the pastoral issued by the Anglican House of Bishops (21 May, 1911) contained the following:

"At the same time we fully admit the right of any ecclesiastical or religious body to make and enforce such spiritual penalties as may be in accordance with its own rules; but without impeaching or interfering with the civil status of the parties concerned."

What then is the complaint? The Roman Catholic church does not pretend that the Ne Temere decree affects the civil status of the parties concerned. And nobody questions the

right of the church to discipline its own members for breach of its own rules. What then is the complaint? Read it as formulated by the recent Methodist Ecumenical Conference in Toronto:

"While holding that the fullest religious liberty should be accorded to men of all creeds, the Conference repudiates the idea that any church decree should have the power to override the civil law, and especially on such a subject as that of marriage, on which the welfare of any community depends."

But the Conference might just as properly have repudiated the idea that the Emperor of Morocco should have the power to alter our bank act, or change our school law.

The Reformed Episcopal Church passed a somewhat similar resolution. It recited that

"It seems by recent developments in the Province of Quebec, that the canon law of the church of Rome has power to override the civil law in relation to the solemnization of marriage."

and declared that

"Such conditions seem out of bearing with British principles of impartiality and freedom."

A resolution declaring that Cingalese Buddhists had power to override our navy act, and making hot appeal to the patriotism of all true lovers of British freedom, would have been equally sensible. I am afraid that many clergymen are somewhat too ready with their condemnation of those whom (as I think) they ought to regard not as enemies, but as allies (*a*).

In order that there may be no question that the Roman Catholic church does not even pretend that its canon law can override the civil law, let me quote from the Tablet (the official organ of the Roman Catholic Archbishop of Westminster):

"The decree speaks only of canonical nullity or validity of marriages; that is of the nullity or validity in the judgment of the Catholic church and in the sight of God. The Catholic church, though she does not acknowledge that the state has any right to determine what marriages shall be null or valid, has no power to change the civil law of marriage. Therefore, notwithstanding the recent decree, if two persons of any religion whatever, against whose marrying there is no legal impediment (that is, no civil impediment according to the law of England) marry each other in England according to the requirements of English law, their marriage is (and such marriage will continue to be) in law, valid and binding, whether a priest or other minister of religion be present or not."

(*a*) One excitable Episcopalian in Winnipeg is reported to have said: "This is a Protestant country that refuses to be oppressed in any way by a foreign Italian bishop."

This extract has been published in Canada as expressive of the view of the Roman Catholic Church here.

THE DECREE: Let us now read the principal article of the Ne Temere decree:—

"Only those marriages are valid which are contracted before the parish priest or the Ordinary of the place, or a priest delegated by either of these, and at least two witnesses, according to the rules laid down in the following articles, and saving the exceptions mentioned under VII and VIII."

That provision, like the decrees of other churches, is of course binding upon members of the church alone, and it is the sheerest nonsense to speak of it as imposing law upon Canada. Indeed the decree itself specially provides that

"Non-Catholics..who contract among themselves, are nowhere bound to observe the Catholic form of sponsalia or marriage."

That was, of course, a very unnecessary provision (unless possibly for the case of a married Protestant joining the Roman Catholic church) but there it is.

The decree made no change in the civil law (for, of course, it could not), and it made but one alteration in the Roman Catholic ecclesiastical law. The paragraph above quoted from the decree is substantially the same as the corresponding article in the decrees of the Council of Trent (1563), and that article was, by the declaration of Pope Benedict XIV, substantially introduced into Canada more than 150 years ago. There is this single difference: that prior to the Ne Temere decree, the rule did not apply to mixed marriages (marriages between a Catholic and a non-Catholic) whereas now it does. That is to say, the decree now requires that mixed marriages to be valid in the eyes of the church, shall be solemnized by a Roman Catholic priest.

The only point which can be attempted in connection with the application of the rule to mixed marriages is this: Previous to the Ne Temere decree, a mixed marriage, solemnized by a Protestant clergyman, was valid in Quebec, both by the civil and the Roman Catholic ecclesiastical law; now it is invalid according to ecclesiastical law; and it may be argued that IF the Quebec courts should refer cases of mixed marriage to the Roman ecclesiastical courts, the decisions would be in accordance with the ecclesiastical law and contrary to the civil law. But there is no room for apprehension on that score. No case of a mixed marriage has ever been referred by a

Quebec judge to a Roman Catholic ecclesiastical court. The reasoning by which such a reference is justified in cases in which both of the interested parties are Roman Catholics has no application to mixed marriages. Fairly familiar with that reasoning, I feel that I am safe in saying that no Quebec court will ever send a mixed marriage case to a Roman Catholic tribunal. When it does, I shall be happy to join in the protest which will certainly ensue.

As a variation of the same attempted point, this too, may possibly be urged: A doctrine of the Roman Catholic Church is: "Once a Catholic, always a Catholic;" nevertheless, as a matter of fact, some Catholics become Protestants; and if questions as to the validity of marriage between Catholics are to be referred to the Catholic courts, it may happen that two Protestants may be sent to a Catholic Bishop. But the sufficient reply is, that the civil courts, quite rightly, pay no attention to the doctrine referred to. They investigate for themselves. In cases relating to tithes, they frequently have to do so. If anyone baptized as a Catholic is asked to pay tithes, he may plead that he has left the Catholic Church, and no one, so far, has been ignorant enough to tell him, in a civil court, that he is still a Catholic, upon the ground that: "Once a Catholic always a Catholic."

Summary: For the sake of clearness it will be well to summarize the results arrived at:

1. The Ne Temere decree had no bearing whatever upon the Hebert case.

2. One point involved in the Hebert decision, was that according to the law of Quebec, a Protestant minister cannot validly marry two Roman Catholics.

The second point involved in the Hebert decision was that, according to the law of Quebec, the validity of a marriage between two Roman Catholics must be decided by the Roman Catholic ecclesiastical courts, and not by the civil courts.

3. Whether those decisions are, or are not correct, depends upon the interpretation of a Quebec statute; and the judges hold different opinions.

(*a*) The questions can be settled, as all such questions usually are settled, by an appeal, or by a reference to the Supreme Court of Canada, or the Judicial Committee of the Privy Council.

(*b*) If the law is as held in the Hebert case, it ought to be changed if Roman Catholics so desire. If they do not, it should be left as it is.

(*c*) The points involved in the Hebert case affect Roman Catholics, and no others.

4. The principal clause of the Ne Temere decree has, substantially, been in force as Roman Catholic ecclesiastical law for more than 150 years.

(*a*) The only change effected by the decree, was to extend the application of the rule to the case of mixed marriages. Since the decree, a mixed marriage is, in the view of the Roman Catholic Church, invalid, unless it has been solemnized by a Roman Catholic priest.

(*b*) But the view of the Roman Catholic Church has no more effect upon the civil validity of the marriage, than has the view of the Presbyterian or Episcopalian churches.

5. If it be said that the validity of mixed marriages ought not to be referred for decision to the Roman Catholic ecclesiastical courts, the sufficient reply is, that no such question ever has been so referred; that it is extremely improbable that such a question ever will be so referred; and that present objection and agitation are, therefore, premature.

The Synod's Report: Having now, it is hoped, a clear view of the meaning of the Hebert case and of the scope of the Ne Temere decree, and remembering that the decree has had no effect whatever upon the laws of Canada, let me quote from the report above referred to, and in the name of Canadian fellowship make appeal against it:—

"Are the Decrees of the Pope to Rule in Canada? The recent decree of the Pope calls for an immediate protest on the part of the Dominion, and the taking of all legitimate steps for the protection of her people. What is now occurring in our land forcibly illustrates the truth of the words 'eternal vigilance is the price of civil and religious liberty.' This is a matter in which every citizen, be he Protestant or Roman Catholic, is very vitally interested."

"The Dominion Supreme. . . . Interference with this Supremacy". The object of the Ne Temere Decree (the material portions of which are subjoined as appendix A.) is said to be to impose upon Canada, in an altered form, the laws of the Council of Trent touching marriage."

"What Free Exercise of Religion does not Cover. The claim of the Church of Rome is, that because religious toleration is granted to Roman Catholics, it has thereby been given the power to compel, in order to the supposed validity of certain marriages, the observance, not of what the law of the land lays down in respect thereof, but of the special regulations, antagonistic to these, which the Church of Rome chooses to enforce."

"What Does Rome Claim?" "Rome Can Destroy Matrimony. The immense power claimed then by Rome is seen from the following clause 24 of the Sixth Session of the Council: 'If anyone should say that the Church could

not constitute impediments destroying matrimony, or that the Church has erred in so constituting impediments destroying matrimony, let him be anathema.' What an interference with our Constitution! The attempt of a foreign power to interfere in the government of our land by repealing our laws and casting doubt upon our legislation must be promptly and boldly met by our interdict."

"The B.N.A. Act is displaced, and each citizen of the Dominion may have at his peril to ascertain and to answer, before entering into the state of matrimony, most intricate questions on the law of marriage."

"CITIZENS MUST NOT BE DEPRIVED OF THE FREEDOM GIVEN BY THE LAW OF THE LAND. The civil and religious liberty supposed to be awarded to every citizen of the Dominion as an inalienable and priceless heritage—our birthright—must not be taken away or impaired"

"WHAT POWER IS TO SETTLE OUR MARRIAGE LAWS? Your committee submits that this is a question in which all the citizens of Canada, whatever their religious beliefs may be, are vitally interested—Roman Catholics equally with others. Are the people of Canada to be humiliated by dictation from any outside power, lay or ecclesiastical, upon the question of their marriage laws? Are they prepared to admit in a land, where religious equality is one of our constitutional rights, that such a canon as the twenty-fourth of the sixth session of the Council of Trent should be allowed to be operative in our Dominion?"

For no one of these quotations can the slightest justification be suggested.

One of the recommendations of the Synod Committee is as follows:

"That any one who enters into a household for the purpose of stirring up strife, and endeavoring to cause a separation because of the absence of some requirement, merely of a religious denomination, should be declared to have committed a breach of the law of the land and should be made responsible for the consequences."

I am very doubtful about the advisability of that sort of legislation, but a perusal of the report just referred to would (during the heated moment) almost induce me to vote for it if amended as follows:

"That anyone who does anything for the purpose of stirring up strife and endeavoring to cause a separation between members of a community, merely to gratify religious animosity, should be declared to have committed a breach of the law of the land and should be silenced—more or less effectively."

SOME IMPERIALISTS.

In Kingdom Papers No. 4, I said:

Perhaps the most satisfactory feature of Canada's very rapid progress towards independence is the fact that the great majority of those who still regard themselves as staunch imperialists not only contentedly accept the advances which, from time to time, are made, but that they themselves are learning to use, with apparent pleasure, the language of nationalism."

And in illustration of what I meant, I quoted language of Lord Grey, which, (if its authorship were unknown) would, by many Canadians, have been ascribed to some foolish nationalist. I want to give a few other illustrations.

1. Mr. Lyttleton: The Right Hon. Alfred Lyttleton is a strong imperialist. He succeeded Mr. Chamberlain as Colonial Secretary, and pursued that gentleman's imperialistic methods in dealing with the colonies. It was he who proposed to turn the conferences into a council, with the hope that it might grow into a parliament. That was in 1906. In 1911, he wrote one of the chapters of a book entitled "British Dominions" (edited by Prof. Ashley), and from that chapter (pp. 16-18) I make the following quotations:—

"But action should be organised in the clear appreciation of the fact that, as between the parent country and the Dominions, there is now *a practical equality of status.* Permit me for a minute to dwell on this topic. In 1905, I wrote on behalf of the government (*a*) a circular despatch to the governments of the Dominions touching imperial organisation, and making certain suggestions, some of which have borne fruit, with respect to the conference then anticipated as about to take place. In this despatch the expression "States of Empire" occurred, and was noticed as being a novelty in nomenclature; but *now it has passed into the normal currency of descriptive terms.* Ten years before, Lord Ripon, writing on behalf of the Liberal government of the day, expressed himself thus: 'To give colonies the power of negotiating treaties for themselves, without reference to Her Majesty's government, would be to give them an international status as separate and sovereign states, and would be equivalent to breaking up the Empire into a number of independent states; a result which Her Majesty's government are satisfied would be injurious equally to the colonies and to the mother country, and would be desired by neither. Negotiations, being between Her Majesty's government and the sovereign of a foreign state, must be conducted by the representative of Her Majesty at the Court of the foreign power, who will inform the government and seek instructions from them,

(*a*) That is, the British Government.

as necessity arises.' But it will be in your recollection that quite recently, and with the full approval of His Majesty's present government, the Dominion of Canada carried on independently exactly such negotiations as Lord Ripon had criticised. Technically these negotiations were carried on with the knowledge of His Majesty's representative; but, it has been authoritatively stated in parliament, and not denied, that *at no stage of the proceedings was His Majesty's government consulted.* Now, I desire specially to emphasize that, although regret has been expressed that Canada should have had to deal as an isolated unit with other great commercial countries, unsupported by a coherent and concerted imperial policy to strengthen her hand, *no criticism whatever has been made as to her right to act as she has acted,* no echo of Lord Ripon's strong protest has been heard from any quarter or any party; on the contrary, Mr. Balfour in the House of Commons was understood to say that His Majesty's government were well advised, in the changed conditions, to recognise the legitimacy of the Canadian claim, and CORDIALLY EXPRESSED HIS PLEASURE AT THE GROWTH OF THE DOMINIONS TO THE STATURE OF NATIONALITY.

For a long time the true political relation of this country to the Dominions was obscured in wise silence; but the period during which that silence could be maintained has now ceased. The consciousness of the great Dominions has rapidly matured; and the recurring imperial conferences have of necessity brought about a clearer definition of their national aspirations. 'We do not seek independence or separation from the old motherland' the daughter states do not want separation; the freer they are, the more attached are they to their allegiance. We are independent as a nation, but while we are independent as a nation, we are subject to His Majesty the King, and we have no other sovereign, but the King of Great Britain and Ireland" In such words, and they are by no means the first, Sir Wilfrid Laurier has asserted the position of the Dominion of Canada; and IN THEIR CLEAR LIGHT, IMPERIAL ACTION IN THE FUTURE SHOULD PROCEED' (pp. 16, 17).

I find myself in perfect accord with Mr. Lyttleton's sentiment. He would object to independence *if by that was meant the severance of our allegiance to the Crown.* I, too, would object to independence in that sense. He believes that future action should proceed upon the basis that Canada is "independent as a nation" but "subject to His Majesty the King"—"with no other sovereign but the King of Great Britain and Ireland." That is precisely the language for which I have been pretty severely scolded in Canada. May I not repeat what I said in Paper No. 1, that:—

"in England the point is much better understood."

At another place (page 20) Mr. Lyttleton after discussing Adam Smith's affirmation

"that Great Britain might legitimately settle treaties of commerce with her colonies overseas, so as to effectually secure to her greater advantages than the monopoly which she at one time enjoyed—treaties which might dispose them to favor us in war as well as in trade."

added the following words:

"The conditions which Adam Smith had in his mind were those now actually realised, viz. The PRACTICAL INDEPENDENCE OF THE SELF-GOVERNING COLONIES."

In the Kingdom Papers I have frequently made the same assertion, and I have made it no more strongly than does the Unionist Colonial Secretary of 1905. At still another place, Mr. Lyttleton said:

"It is not an exaggeration to say of these plans that a scheme has now been launched for an imperial navy capable of indefinite expansion, subject always to the right which has been already referred to, of each State to approve or disapprove, and THUS TO ENTER OR NOT TO ENTER UPON WAR."

That is the right which I have always claimed for Canada. We may, and probably shall, take part in British wars; but, when discussing our constitutional position, I purposely omit all reference to what we *may* desire to do. I deal with one point at a time. As to our *right* to approve or disapprove of British wars and to act accordingly, my view is that of Mr. Lyttleton.

2. MR. WARWICK CHIPMAN: Mr. Chipman is evidently an imperialist, and one of the few of that class who are still unconvinced of the impracticability of "imperial federation." Indeed, he appears to think (*a*) that no satisfactory answer can be given to his question

"Why then not deal with them" (common interests) "in our ordinary constitutional manner by a single representative body responsible to a united electorate?"

I quote this, not to answer it (The Imperial Federation (Defence) League found the answer, and changed both its name and its purpose), but as rendering extremely significant some other passages of Mr. Chipman's article:—

"Perhaps the most striking feature of the British Empire is *the fact that it does not exist.* It is as true for us as it was for Adam Smith more than a century ago that 'this Empire has hitherto existed in imagination only. It has hitherto been, not an empire but the project of an empire.' It may be that we ought rather to say that if there be a British Empire then, great as it is, it relates to not one quarter of the King's Dominions. If the phrase betokens the control by one

(*a*) "War and Empire" in The *University Magazine*, October 1911, page 390.

of them, of immense territories and wide-spread populations, it has indeed a sufficient fulness of application; but, in the more modern and the broader meaning of common effort and common responsibility on the part of all who fly the same flag, *we are not able to use it.* Britain has an Empire; Canada, Australia, New Zealand, South Africa, have nothing but themselves.

"Sir Wilfrid Laurier proclaimed this when he declared, *quite logically*, that unless we were consulted in the policies that governed Empire, *it remained with us to say when, and whether if at all, we should take our part in the consequences.* He went considerably farther and changed indeed the whole basis of his logic, when he announced his wish that the Dominions should not be consulted, because they would thereby commit themselves to liability for the consequences. Mr. Fisher of Australia is reported to have been not less frank in stating (*a*) that we are not an empire, but a very loose association of independent nations, willing to remain in fraternal co-operative union, but only on condition that we may at any time, or for any cause, terminate the connexion, untrammeled by any laws, treaties, or constitutions. While he has repudiated the report, the fact that it could be published is in itself momentous.

"To some, this state of affairs is a matter of congratulation, to others of regret; to none can it be a matter of indifference, for, whichever *party* be the wiser, *things cannot stay as they are.* The facts are changing as we look at them: and these are the days that inevitably determine *whether a British Empire will ever declare itself*, or whether it will be written in history as nothing but an abandoned hope.

"If we would have any clear idea of the forces and tendencies involved in this question, *we must rid our minds of the metaphors that are the cant of our time. It is not the part of wisdom that similes and figures of speech should control policies; and yet on every hand they are held out to us as the decrees of fate.*"

One would think that nobody could object to a request for definition and precision. Coming from an imperialist it will probably escape criticism. When I pleaded for the proper use of words, I was told that my

"insistence on certain nomenclature is in itself suspicious (*b*)."

Mr. Chipman proceeds to point to the necessity for clear understanding of the subject, and in doing so makes use of an argument which in slightly different form may be found in Kingdom Paper No. 1. (pp. 19–20):

"Certain it is that there is now for our choosing an imperial ambition, the noblest we might conceive, with opportunities, such as none have had, to realize the conception. Certain, too, it is that WE IN CANADA NEED SOME DEFINITE STATUS, TO PUT AN END TO THOSE DOUBTS OF OUR NATIONAL INTEGRITY THAT MUST MAKE EVERY TRUE CANADIAN BLUSH FOR SHAME. Was there ever a spectace as we, for the last twelve months, have presented, of a concrete and vigorous country wondering how far it could remain loyal to itself, how far it might be

(*a*) Review of Reviews, July 22, 1911.
(*b*) United Empire, August, 1911, p. 573.

tempted to yield its very body and soul to influences alien to its whole tradition? Let us have done with this for ever by announcing, once for all, to ourselves and to our neighbors that we move in other ways."

Certainly, but there is not the slightest use in telling our neighbors that "we move in other ways" unless we actually do it; and, if we are to postpone the announcement (as Mr. Chipman would probably suggest) until we are ready for "imperial federation", there is every chance of the spectacle which we have presented for the last twelve months continuing for the next twelve centuries.

Mr. Chipman sees that our present undefined relations with the United Kingdom are a source of danger (I have made the same point upon several occasions) from a war point of view:

"Sir Wilfrid Laurier's notion, if it be really anything more than rhetoric intended to take the wind out of the sails of Mr. Bourassa, that when England is at defensive war, Canada, if it chooses, can be at peace, is amazingly naive (*a*)."

"The same must be said, though with a difference, in considering the views wrongly put into the mouth of Mr. Fisher of Australia. 'There is no necessity for us to say we will, or will not, take part in any of England's wars. If we were threatened we should have to decide whether to defend ourselves; and if we thought the war unjust and England's enemy in the right, we should have the right to haul down the Union Jack, hoist our own flag, and start on our own account.' Of those who agree with such declarations, it may very pertinently be asked, is England to have the same liberty if the strenuous nationalism of any one of the Dominions brings it into trouble in its own sphere? Is Britain to be free to leave the proud Dominion to its own devices on the plea that she had no say in the policy that provoked the war? (*b*)."

Mr. Chipman's idea seems to be that the relation of the United Kingdom and Canada is that of nations that have entered into a war alliance, namely that each is under obligation to assist the other in case of war. That may possibly be a very good arrangement to enter into; but it has not been made; and quite possibly neither the United Kingdom nor Canada would agree to it. The United Kingdom might very well urge that Canada's war assistance was not sufficient consideration for the assumption of responsibility for all that Canada might do. And, on the other hand, Canada might very properly urge the extreme unlikelihood of war on her behalf, as against the constant menace which alliance with the United Kingdom would produce.

If, then, the United Kingdom and Canada have entered into no such arrangement, and if it is quite possible that neither of them would agree to it, the answer to Mr. Chipman's question is very simple. He asks:

(*a*) *University Magazine*, p. 398. (*b*) Ibid., p. 399.

"Is Britain to be free to leave the proud Dominion to its own devices on the plea that she had no say in the policy that provoked the war?"

And the answer is that, undoubtedly, Britain is not only "to be free", but is now perfectly free; that she would probably not agree to be anything but free; and that until she does so, she will for the future continue to be free. She was perfectly free, not only to leave us to our own devices, but actually to side against us upon the only two occasions upon which her navy has taken part in our quarrels—once she helped, illegally, the French against the Newfoundlanders, and on another occasion she assisted United States' cruisers to chase our sealing-ships from the Pacific. I thoroughly understand—indeed, I have strongly urged—that such a situation is absurd as well as dangerous. We ought to see if a reasonable arrangement can be made upon the subject, and in that way put an end to all the uncertainty which the present situation produces.

3. The Encyclopedia Britannica: In the recently issued edition of the Encyclopedia Britannica may be found the following:

"British Empire, the name now loosely given to the whole aggregate of territory, the inhabitants of which, under various forms of government, ultimately look to the British crown as the supreme head. The term 'empire' is in this connection obviously used rather for convenience than in any sense equivalent to that of the older or despotic empire of history."

The writer of this paragraph did not sufficiently distinguish. The British Empire is still a reality and still despotic. India and scores of other places are under constant reminder of the fact. The writer did not mean to assert otherwise. He meant to say that the words *British Empire* are used "loosely" *when they are intended to include Canada* and other places which have ceased to be governed by the Colonial Office. That is perfectly true. But so long as we continue to use the words loosely some of us will think loosely—many will continue to imagine that Canada is *really* a part of the British Empire. And convenience is not a sufficient excuse. If we wish to speak of

"The whole aggregate of territory, the inhabitants of which, under various forms of government, ultimately look to the British Crown as the supreme head"

let us use the proper term, The King's Dominions, or (if we wish to be a little sonorous) The Dominions of the King. And let us apply the words *British Empire* to the aggregate of territory which they properly describe, namely, the United Kingdom and the

places governed by the United Kingdom. Canada is part of the King's dominions. Canada is not part of the British Empire. India and the Crown Colonies are. Why not use terms accurately?

Lord Grey recently told us that he had

"rejoiced as an Englishman over the material developments of Canada, and over her *emergence from the status of a daughter to that of a sister nation in the empire*(a).

Let us keep the idea of that emergence clearly in our minds. In perfect accord with it, the writer in the Encyclopedia Britannica says that

"It is understood that the principal sections of the empire enjoy equal rights under the Crown and that none is subordinate to the other"

—a sentence which would be improved by the omission of the loosely-used word *empire*, and the substitution of the more accurate phrase, the *King's dominions*.

4. Mr. Reginald V. Harris (Halifax, N.S.) was accorded the 100 guinea prize offered through the "Standard of Empire" for the best short essay on "The Governance of Empire." His imperialism is very real—if much too indefinite for clear expression. He commences his essay with the assertion that

"Imperial unity is not only essential to the well-being of the empire, but absolutely necessary to its maintenance;"

from which we might reasonably gather that, in the writer's view, we are in full enjoyment of imperial unity (whatever that may mean) and that a method of its maintenance was the subject of his essay. But we should be wrong, for the writer immediately proceeds to tell how we are to set about achieving the necessary unity, and, before he leaves his first page, declares that

"The duty is upon all the states of the empire to set up the ideal and work towards it; to preach the gospel of all-British co-operation as the gospel of all-British salvation."

In other words that so far from there being an imperial unity, and so far from the writer having any desire for it, our ideal ought to be co-operation which, of course, necessarily implies not unity but plurality. After a digression the ideal is stated in this way:

(a) Ante, p. 115.

"Co-ordinated autonomy is the ideal, and the true essentials to any real forward step towards closer union are a recognition of the equal partnership of Empire and a zealous spirit of co-operation."

But nobody knows what either a "co-ordinated autonomy" or an "equal partnership of empire" is. I suppose that if we repeated the words "co-ordinated autonomy" or, for example, "co-operating unity" often enough, we might not only get to imagine that they really did mean something, but we might actually become ecstatic and insistent about them. Imperialism (or rather the misty unreality which the word is supposed to suggest) exists almost solely because of the looseness of the language in which it expresses itself. What in the world is "an equal partnership of empire?"

Mr. Harrison, then, is one whom I may safely use as a further illustration of the truth of one of the assertions with which the second part of this paper commenced. He says:

"There is a convenient but weak and dangerous theory that great things will come to pass by letting present things alone."

"The problem is to harmonize the organization without doing violence to the principles by which the Empire is matured. Experience and a close analysis of the problem, however, have shown that immediate union on the lines of an elaborately constituted imperial parliament with the jurisdiction of the imperial and local parliaments carefully distinguished and defined *presents difficulties too great and advantages too few* to permit of the fulfilment of the great constitutional dream. That is a far-off vision of union."

"Although during the past twenty-five years many formal plans have been suggested for reaching a basis of mutual understanding and for strengthening the bonds of Empire, *the Empire is still without an articulating agency.*"

"The present conception of the British Empire regards Great Britain and the self-governing dominions of Greater Britain as constituting a group of allied nations. If there is a difference between the ordinary relations of allied peoples and those existing between the motherland and the kindred states it lies in the fact that there exists much greater freedom of speech and intercourse than is permissible and customary between other allies; there is a recognition of the perfect autonomy which has accompanied the growth to full nationhood of the self-governing dominions; and there is on the part of the latter a clear and fair conception of their responsibilities as part of one empire. There seems to be, in short, a virtual declaration on their part for *autonomy first and combination afterwards. Nor does it appear that any other solution of the problem would be either advisable or possible.*"

All of that would do exceedingly well for a Kingdom Paper. There is in it, no doubt, a certain looseness of phraseology, but, for that Mr. Harris seems to think that he ought not to be blamed—that it ought to be debited to the uncertainty of present political relations, and looking forward he tells us that:

"As time went on there would be more precise methods of government attained, *a scientific basis would be reached in which terms and phrases would correspond with some closeness to the reality.*"

I am quite sure that such a very competent essayist as Mr. Harris could discuss any other subject but imperialism in clear and coherent fashion. And may I not humbly ask whether either our patriotsim or our piety would suffer complete submergence if, in a quiet, unobtrusive sort of way, we ventured, once in a while, to discuss, with proper seriousness, our political status in terms and phrases which "would correspond with some closeness to the reality?"

5. Mr. Hamilton: As journalist and publicist, Mr. C. Frederick Hamilton (Ottawa, Ont.) enjoys an enviable reputation. I had always supposed that his imperialism was not only rigid but militant. His recent article in United Empire (June, 1911)is, however, almost indistinguishable from a Kingdom Paper. Taking as his title "A Prince of Canada", and noting that,

"Our constitutional development is reaching a stage which seems ripe for an advance",

Mr. Hamilton asks:

"And will Canada be carrying on the series of governors-general selected from the peerage when she has twenty, forty, sixty, millions of people?"

and makes reply that

"We must expect to see growing up a system whereby a Prince of the British Royal Family will be installed for something closely resembling a life tenure of the post of—whatever we like to call him: Governor-General,Viceroy, Prince of Canada: the fact is more important than the title."

Referring to our constitutional history, Mr. Hamilton says:

"We have had British governors since 1760, a matter of 150 years. For much the greater portion of that time the governor was a governor in the full sense of the word. Canada was a colony; a dependency of the British crown of the United Kingdom and of the British parliament. The governor was an officer subject to the British parliament, under the orders of a parliamentary minister, sent to manage the affairs of Canada in acordance with the dictates of the policy of the United Kingdom. To some extent he was to exercise the local duties and functions of the monarch, but to a larger extent he was to be the agent in Canada of the British parliament: he was the ambassador of British policy; he lived amongst us, to some extent, as our local constitutional head, but to a larger extent as the representative of an outside power which bent our policy, or was supposed to bend it, to further its interests. This stage of our development

was marked by a good deal of bickering, and by much ill-feeling. For fully a century the governor-general was the representative in Canada of British policy, and bore "instructions" which enjoined him to overrule Canadian policy if it did not square with imperial views. Lord Monck, our first confederation governor-general, was directed to reserve divorce bills and bills imposing differential duties. To-day all that is changed. I take it that the governor-general is designated by the imperial authorities to be our local constitutional head and very litle else. He is sent to discharge in our domestic affairs the functions which the King discharges in the domestic affairs of the United Kingdom. While he undoubtedly is the channel of communication with the United Kingdom, there is little or no suggestion that he is sent to "steer", us, as an American would say. Instead of representing British policy in Canada *we now observe a growing tendency to look upon him as representative of Canadian policy in Great Britain.*"

The effect of the change from peers to princes, (a change undoubtedly of most momentous import), Mr. Hamilton presents to us as follows:

"Such is our situation at the moment when we make the highly interesting experiment of placing a royal personage of the highest rank in Rideau Hall. The key to it is the plain, simple fact that once we get a royal prince as governor-general it will go against the grain to replace him by a person of lower rank. The gratification which we experience at the Prince's coming will be the measure of the difficulty of finding a successor. And it is impossible to establish a six-year succession of royal princes."

"The solution surely is the abolition of the six-year term; the making of the governor-generalship a life appointment. It will be our English way of course to do it piecemeal and cautiously; to appoint His Royal Highness for a short term to see if all goes well, and then when the period draws to an end to re-appoint him; and to continue the process until it occurs to some bold spirit to abolish the six-year limitation, by that time become a dead letter."

"In effect I am advocating the establishment of a new sub-variant of monarchical government, A LOCAL KINGSHIP, if I may dare to use the phrase, in an exceedingly democratic country, which at once reposes its loyalty in the King overseas, and is destitute of the innumerable safeguards to monarchy in its daily life which the social system of England provides."

"KING GEORGE WILL REMAIN OUR KING; IT WOULD BE WELL TO ACCOMPANY THE CHANGE I ADVOCATE BY PROCLAIMING CANADA A KINGDOM, AND CROWNING KING GEORGE (WITH A SEPARATE CANADIAN CROWN IF YOU LIKE) KING OF CANADA."

And Mr. Hamilton summarizes his notable article in this way:

"1. The king, who should be specifically the King of Canada, should nominate the governor-general, or prince of Canada.

2. The prince should hold office for life, subject:

3. To the provision that the king may recall him, either of his own motion, or on receiving an address from both houses of parliament of Canada.

This is a far view, though by no means so far a view as Wakefield's when he wrote in 1849. Let those who object to taking long views reflect on one

consideration to which I have already alluded: *How are we to find a successor to His Royal Highness in* 1917?"

I heartily concur in Mr. Hamilton's remark that

"Our constitutional development is reaching" (I should say has reached) "a stage which seems ripe for an advance."

I agree that it is impossible to answer affirmatively the question

"And will Canada be carrying on the series of governors-general selected from the peerage when she has twenty, forty, sixty, millions of people?"

I agree with Mr. Hamilton's historical review. I agree (with a qualification hereafter referred to) that

"Once we get a royal prince as governor-general it will go against the grain to replace him by a person of lower rank"—from England.

I agree that King George should remain our King, and that he should be "specifically the King of Canada." I agree that the king "should nominate the governor-general or prince of Canada", and I agree that

"It would delight us if something made it plain that he is chosen by the king as distinct from his ministry of the United Kingdom."

I agree that Canada should be proclaimed a kingdom; and that King George should be crowned with a Canadian crown, King of Canada.

I agree with all this because it appears to me to be so fitting, so laudable, so necessary, and so inevitable. But I am doubtful about Mr. Hamilton's solution. It is, indeed, most appropriate that the ascending scale in social importance of Canada's governors should come to climax, as Canada approaches nationhood, in a prince of the royal blood, but the next step is not, as I think, one from six-year office to a life term, but one which will present still further acknowledgment of our admitted equality of political status, namely, the appointment of one of our own people as Viceroy of Canada. There is no office in Canada from which Canadians ought to be excluded (*a*). "How are we to find a successor to his Royal Highness in 1917?" I TAKE THE LIBERTY OF PROPOSING SIR WILFRID LAURIER.

(*a*) Sir Francis Hincks became Governor of Barbadoes and afterwards of British Guiana.

6. Lord Milner: Lord Milner may very properly be regarded as the leader of the British imperialists. A somewhat lengthy quotation from him upon pages 12 and 13 of Kingdom Paper No. 1 warrants his inclusion among those imperialists who make use of the "language of nationalism". The quotation commenced as follows:

"The word 'empire' has in some respects an unfortunate effect. It, no doubt, fairly describes the position as between the United Kingdom and subject countries such as India or our Central Africa possessions. But for the relations existing between the United Kingdom and the self-governing colonies it is a misnomer and with the idea of ascendancy, of domination inevitably associated with it, a very unfortunate misnomer."

The *Montreal Star* speaks of the free communities which

"we maladroitly call the 'British Empire' (*a*)."

Quotations from other imperialists could be added, but probably sufficient have been supplied to prove that I was not speaking recklessly when I said:

"That the great majority of those who still regard themselves as staunch imperialists, not only contentedly accept the advances which from time to time are made, but that they themselves are learning to use the language of nationalism."

JOHN S. EWART.

November, 1911.

(*a*) The *British Standard of Empire* whose raison d'être is imperialism, copied the *Star's* paragraph (13 October, 1911).